



PATENT
Customer No. 22,852
Attorney Docket No. 09605.0002-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Bernat Vidal Juan et al.)
)
) Group Art Unit: 1624
Application No.: 10/509,280)
Now U.S. Patent No. 7,504,398) Examiner: Susanna Moore
)
§ 371 date: May 5, 2005) Confirmation No.: 7655
)
For: SUBSTITUTED 4-)
(PYRROLOPYRIMIDIN-6-YL))
BENZENESULPHONAMIDE)
DERIVATIVES)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT

In accordance with 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment of the above-identified patent. This application is being filed within two months of issuance of the above patent, as required by 37 C.F.R. § 1.705(d), and includes a statement of facts pursuant to 37 C.F.R. § 1.705(b)(1).

I. Statement of the Facts Involved

A. Correct Patent Term Adjustment

According to the Patent and Trademark Office, this application is entitled to 152 days of patent term adjustment. See cover page of patent and Issue Notification mailed February 25, 2009.

05/18/2009 SZEWDIE2 00000007 10509200

01 FC:1455

200.00 0P

Applicants have calculated a patent term adjustment of 459 days based on the following facts:

Relevant Dates

The above application was filed on September 28, 2004, and has a § 371 date of May 5, 2005.

A Non-Final Office Action was mailed February 27, 2007, resulting in a U.S. Patent and Trademark Office (PTO) delay of 237 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A)(i).

On May 29, 2007, Applicants filed a response to the Non-Final Office Action mailed February 27, 2007, resulting in a delay by Applicants of 2 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2). On June 25, 2007, Applicants filed a response to the Notice of Non-Complaint Amendment issued by the Office on June 8, 2007, resulting in a delay by Applicants of 27 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2). On December 20, 2007, Applicants filed an Information Disclosure Statement (IDS), resulting in an additional delay by Applicants of 178 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2).

A second Non-Final Office Action was mailed March 4, 2008, resulting in a U.S. Patent and Trademark Office (PTO) delay of 131 days beyond the 4 months provided by 35 U.S.C. § 154(b)(1)(A)(ii).

On June 22, 2008, Applicants filed a response to the second Non-Final Office Action mailed March 4, 2008, resulting in a delay by Applicants of 18 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2).

A Notice of Allowance was mailed October 31, 2008, resulting in a U.S. Patent

and Trademark Office (PTO) delay of 9 days beyond the 4 months provided by 35 U.S.C. § 154(b)(1)(A)(ii).

In summary, the total PTO delay during prosecution is 377 days, and the total applicant delay is 225 days.

The issue fee was paid on January 27, 2009. The '398 patent issued March 17, 2009. The three year pendency date for determination of patent term adjustment is May 5, 2008, thereby creating a U.S. Patent and Trademark Office (PTO) delay of 316 days.

Under *Wyeth v. Dudas*, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) begins to toll three years after filing date of the application. Thus, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) began to toll on May 5, 2008, and ended with the patent being issued on March 17, 2009, resulting in 316 days of PTO delay under the three-year pendency rule. Of which, 9 of the days exceeding the three-year pendency date overlap with the earlier 377 days of PTO delay. Thus, the PTO delay under the three-year pendency rule is 307 days ($316 - 9 = 307$ days).

Wyeth v. Dudas instructs that the PTO delay of 307 days under the 3-year pendency rule provided by 35 U.S.C. § 154(b)(1)(B)) should be counted in addition to the 377 day PTO delays provided by 35 U.S.C. § 154(b)(1)(A). Thus, the total term adjustments based on the PTO's delay is 684 days ($307 + 377 = 684$) and the reductions in term adjustment based on Applicants delay is 225 days, resulting in a patent term adjustment of 459 days total ($684 - 225 = 459$). Thus, the total USPTO adjustment is 459 days. Applicants respectfully request that the current patent term adjustment be reconsidered.

B. Terminal Disclaimer

The above-identified patent is subject to a Terminal Disclaimer.

C. Reasonable Efforts

According to Applicants belief, aside from the facts identified above, there were no other circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application as set forth in 37 C.F.R. § 1.704.

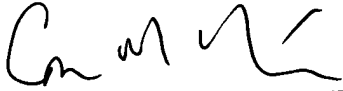
II. Fee

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a check for \$200.00 to cover the required fee. Please charge any deficiencies to Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: _____


Carlos M. Téllez
Reg. No. 48,638
Telephone No. 202-408-4123

Dated: May 15, 2009